

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Applications of	)	
	)	
<b>Landmark Baptist Church, Inc.</b>	)	NAL/Acct. No. MB-200641410067
	)	FRN: 0004052569
For Renewal of License for Stations	)	
WLVF(AM)	)	Facility I.D. No. 36501
	)	File No. BR-20040608AAB
and	)	
	)	
WLVF-FM	)	
Haines City, Florida	)	Facility I.D. No. 36500
	)	File No. BRED-20040608AAC

**MEMORANDUM OPINION AND ORDER  
AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: January 31, 2007**

**Released: February 22, 2007**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The Commission has before it the captioned applications of Landmark Baptist Church, Inc. (the “Licensee”), for renewal of its licenses for Stations WLVF(AM) and WLVF-FM, Haines City, Florida (the “Stations”). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> by the Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that the Licensee apparently willfully and repeatedly violated Section 73.3539 of the Rules<sup>3</sup> by failing to timely file license renewal applications for the Stations, and willfully and repeatedly violated Section 301 of the Act,<sup>4</sup> by engaging in unauthorized operation of the Stations after their authorizations had expired. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of fourteen thousand dollars (\$14,000), and we grant the captioned WLVF(AM) and WLVF-FM renewal applications.

**II. BACKGROUND**

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the

<sup>1</sup> 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3539.

<sup>4</sup> See 47 U.S.C. § 301.

expiration date of the license sought to be renewed.”<sup>5</sup> Applications for renewal of the WLVF(AM) and WLVF-FM licenses should have been filed by October 1, 2003, four months prior to the Stations’ February 1, 2004, license expiration date,<sup>6</sup> but were not. In fact, the Licensee did not file the renewal applications until June 8, 2004, four months after the date of the Stations’ license expiration. On May 25, 2005, the Licensee requested Special Temporary Authorization (“STA”) for WLVF(AM) and WLVF-FM to continue operating, pending consideration of the late-filed renewal applications.<sup>7</sup> The staff granted the STA requests on June 3, 2005.<sup>8</sup> By the terms of those letters, the STAs expired on December 3, 2005. The Licensee timely filed timely requests for extension of the STAs on November 23, 2005, which remain pending. In the original STA requests, the Licensee indicated that license renewal applications for the Stations “[were] placed in the FCC’s computer system in September 2003. However, the ‘File Form’ button on the computer system was not activated until June 8, 2004, when FCC personnel contacted the station concerning its apparent failure to file a license renewal application.”

### III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the record indicates that the Licensee has failed to timely file license renewal applications for WLVF(AM) and WLVF-FM, as required by Section 73.3539(a) of the Rules. Moreover, it does not dispute that it continued operation of the Stations for more than a year after their licenses had expired on February 1, 2004, before filing the STA requests. Accepting that the failure to timely file was inadvertent, the Licensee nevertheless was obligated to fully comply with the Rules, including timely filing the Stations’ renewal applications and maintaining in effect the station authorizations.<sup>9</sup> It failed to do so.

4. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>10</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>11</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>12</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>13</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with

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<sup>5</sup> 47 C.F.R. § 73.3539(a).

<sup>6</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>7</sup> File Nos. BLSTA-20050525ARL (WLVF(AM)), BLSTA-20050525ARM (WLVF-FM).

<sup>8</sup> *Letters to Joseph A. Belisle, Esq., from Chief, Audio Division, Media Bureau*, Ref. 1800B3 (June 3, 2005)

<sup>9</sup> See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license “rests solely and exclusively with the licensee”)(citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

<sup>10</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>13</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>14</sup>

5. The Commission's Forfeiture Policy Statement and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.<sup>15</sup> The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.<sup>16</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>17</sup>

6. In this case, the Licensee failed to timely file the WLVF(AM) and WLVF-FM renewal applications and continued Station operations for more than a year before filing STA requests and the appropriate renewal applications. Nevertheless, because it had previously been licensed to operate Stations WLVF(AM) and WLVF-FM, the latter transgressions are not comparable to “pirate” wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for each failure to timely file the renewal applications for the Stations, but reduce the propose forfeiture for the unauthorized operation of each station from the \$10,000 base amount to \$4,000.<sup>18</sup> Thus, we propose a forfeiture of \$7,000 for each of the Stations, for a total proposed forfeiture amount of \$14,000.

7. *License Renewal Applications.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>19</sup> That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>20</sup> If, however, the licensee fails to meet that standard, the Commission may deny the

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<sup>14</sup> 47 U.S.C. § 312(f)(2).

<sup>15</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>16</sup> A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

<sup>17</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

<sup>18</sup> See, e.g., *Discussion Radio Incorporated*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7438 (2004); *Gospel Media, Inc.*, Letter, 19 FCC Rcd 15600 (MB 2004). Although in *Gospel Media*, the Bureau imposed a proposed forfeiture of \$3,000 for unauthorized operation, the unauthorized operation lasted only two weeks and the applicant did not allow its STA for continued operations to expire. The \$4,000 forfeiture proposed here for unauthorized operation is analogous to use of an unauthorized frequency by a land mobile station holding a license for a different frequency. See, e.g., *In the Matter of Dave Mitchell*, DA 05-110, 2005 WL 123922 (EB Rel. Jan. 21, 2005); *In the Matter of Joselyn Gordon*, 19 FCC Rcd 23557 (EB 2004).

<sup>19</sup> 47 U.S.C. § 309(k).

<sup>20</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>21</sup>

8. We find that the Licensee’s apparent violations of Section 73.3539 of the Rules and Section 301 of the Act do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>22</sup> Further, we find that Stations WLVF(AM) and WLVF-FM each served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal applications below.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that Landmark Baptist Church, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fourteen thousand dollars (\$14,000) for its apparent willful and repeated violation of Section 73.3539 of the Commission’s Rules and Section 301 of the Communications Act of 1934, as amended.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, Landmark Baptist Church, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

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<sup>21</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>22</sup> For example, we do not find here that the Licensee's operation of the Stations "was conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the stations] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

14. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>23</sup>

15. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal applications of Landmark Baptist Church, Inc. for Stations WLVF(AM) and WLVF-FM, Haines City, Florida (File Nos. BR-20040608AAB and BRED-20040608AAC, respectively) ARE GRANTED.

16. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Jonathan Marshall, Landmark Baptist Church, Inc., 810 Hinson Avenue, Haines City, Florida 33844.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai  
Chief, Media Bureau

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<sup>23</sup> See 47 C.F.R. § 1.1914.